

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: August 9, 2018

Agenda Item: Big Creek Instream Flow Water Rights Lease Agreement (R3)

Division: Fisheries

Action Needed: Final

Time Needed on Agenda for this Presentation: 5 minutes

◆-----◆
Background. On February 15 the commission directed FWP to negotiate water-right lease renewal agreements for currently leased water rights from Big Creek as well as negotiate additional new water right leases as appropriate. An agreement has been negotiated with John L. Lake, Jr. and the Yellowstone Stage Stop Estates Water Users' and Homeowners' Association to renew an existing lease of 2.8 cubic feet per second. The agreement also leases the remaining portion of these owners' water rights from Big Creek, which total up to 1.58 cfs. The cost of the 2.8 cfs lease renewal is \$7,500 per year for 10 years. The additional water lease will be compensated at the same rate (\$2,679 per cfs).

The lease renewal protects 2.8 cfs of the first priority right on Big Creek. The additional new water lease would protect up to 1.58 cfs of the first and second priority rights. The actual amount of water that can be protected under the additional water lease will be determined by DNRC. The purpose of the leases is to maintain flow in the lower 1¼ mile of Big Creek. Like other upper Yellowstone River tributaries, the focus of this water lease is to protect flow in Big Creek to provide for the successful spawning, incubation, emergence and outmigration to the Yellowstone River of Yellowstone Cutthroat Trout.

Public Involvement Process & Results. As part of the original change to instream flow in 1999, DNRC provided notice to potentially affected parties of the opportunity to object to the change to instream flow. Other water users were also given the opportunity to provide new evidence of adverse effects during the first renewal of the lease in 2009. As part of the current lease renewal process, DNRC would notify other water users and allow them to submit new evidence that the in-stream-flow lease has adversely affected their water rights. The additional water right lease will be subject to the regular water right change process which will include the completion of an environmental assessment by DNRC, and other water users will be given the opportunity to object.

Alternatives and Analysis. The No-Action alternative would be for FWP to not renew the current lease and not lease the additional water rights resulting in significantly lower Yellowstone Cutthroat fry production from Big Creek. Another alternative would be for the water right owners to temporarily change the water right to instream flow without the involvement of FWP. This alternative would require them to incur the legal and technical cost of pursuing a new change to instream flow. The owners may well choose not to pursue a new change to instream flow for the benefit of the public fishery without FWP assistance.

Agency Recommendation & Rationale

FWP recommends that the commission approve the Water Rights Lease Agreement to continue the protection of instream flow in Big Creek benefiting Yellowstone cutthroat trout.

Proposed Motion

I move to approve the Water Rights Lease Agreement with John L. Lake, Jr. and the Yellowstone Stage Stop Estates Water Users' and Homeowners' Association.